

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART TAP-A

X

THE PEOPLE OF THE STATE OF NEW YORK

Decision and Order

- against -

Indictment No. [REDACTED]

[REDACTED]
Defendant.

X

STEVEN W. PAYNTER, J.S.C.:

I have read the transcript and the recommended Findings of Fact and Conclusions of Law of the pre-trial suppression hearing held in Part JHO, before Judicial Hearing Officer, Hon. Arthur Cooperman on July 29, 2014, December 23, 2014 and February 24, 2015. The court has reviewed the exhibit introduced at the hearing.

The Findings of Fact and Conclusions of Law are:

Adopted _____

Rejected _____

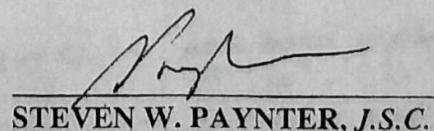
Modified as follows:

The defendant's motion to suppress statements is denied since his statement is sufficiently attenuated from the unlawful arrest (*see, People v. Martinez*, 37 NY2d 662; *People v. Santos*, 3 AD3d 317).

The defendant's motion to suppress physical evidence is granted.

The foregoing constitutes the decision and order of the Court.

Dated: April 23, 2015
Kew Gardens, New York



STEVEN W. PAYNTER, J.S.C.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM : PART-JHO

X R E P O R T

THE PEOPLE OF THE STATE OF NEW YORK :
BY: ARTHUR J. COOPerman, J.H.O.
-against- : DATE: APRIL 7, 2015
[REDACTED] : INDICT. [REDACTED]
Defendant. X

MOTION TO: SUPPRESS PHYSICAL EVIDENCE AND STATEMENTS
(MAPP/HUNTLEY/DUNAWAY Hearing)

FOR DEFENDANT: KEVIN O'DONNELL, ESQ.
FOR PEOPLE: MICHAEL VANUNU, ESQ., ADA

The defendant is charged with, inter alia, Criminal Possession of a Controlled Substance in the Third Degree. He has moved for an order suppressing physical evidence and statements, contending that he was subjected to an unlawful search and seizure and that his statements were taken in derogation of his constitutional rights. A hearing to report on the admissibility of this evidence was held on July 29, 2014, December 23, 2014, and February 24, 2015¹. Police Officer Andre Figueiredo testified on the People's behalf and I credit his testimony in all pertinent and relevant aspects, except for certain facts that will be addressed in the body of the report.

¹
No testimony was taken on February 24th and both sides rested.

FINDINGS OF FACT

Officer Figueiredo testified that on November 13, 2013 at approximately 4:45 P.M. he was on patrol in the Redfern projects, which he characterized as a drug-prone location. He said that he received a radio transmission that a tall male black armed with a firearm had fled from Nassau County and into the Redfern projects. The male was described as wearing blue jeans and a dark blue or black jacket. Upon hearing the transmission, the officer drove into the middle of the Redfern projects. As he approached the front of 1310 Redfern, he observed the defendant, a "fairly tall" male black wearing jeans and a dark jacket, walking up the walkway to the front door of the building. The officer stated that from a distance of one or two car lengths, he saw the defendant bend over and reach down to the "his right foot sock area" (Suppression hearing minutes, p7). When the defendant stood up, the officer saw a white glassine envelope in his right hand that he believed, on the basis of his training and experience, contained heroin, crack, or cocaine. At this time, Officer Figueiredo began to approach the defendant from behind. As he did so, he saw the defendant put the glassine envelope into his right jacket pocket, then bend down a second time.

According to Officer Figueiredo, he approached the defendant and asked if he lived in the building. The defendant

initially replied that he was visiting someone, then said that he was there to pay his rent. The officer stated that he placed the defendant under arrest and searched him, recovering one glassine envelope of heroin from his right jacket pocket and 49 glassine envelopes and a bag of marihuana from his left jacket pocket. Thereafter, the defendant was transported to the 101st precinct police station where \$1700 in U.S. currency was recovered from him.

On cross-examination, P.O. Figueiredo testified that he received the radio transmission "a couple [of] minutes prior to observing the defendant, who was the first person he saw after entering the project and who matched the general description of the individual described in the transmission. He said that the defendant was initially walking with his hands in his pockets, but removed his hands as he walked up the walkway toward the building. The officer stated that he kept his eyes on what the defendant was reaching for when he first saw the defendant reach down to his sock, and it was at this time that he began to exit his vehicle. He saw the defendant "come up" with a little white envelope that he put in his jacket pocket, at which point he began to approach the defendant, who bent down again when he reached the front door. The officer then approached the defendant, told him to keep his hands out, and asked what he was doing in the area.

According to P.O. Figueiredo, the defendant had the white envelope in his two front fingers, then closed it in his fist. About half of the envelope was visible, about 1 to 1½ inches, and the maneuver was made in "one swift motion" (id, p19).

Officer Figueiredo further testified on cross-examination that the defendant's back was to him when he was making his observations. He said that as soon as he saw the envelope, he believed that it was a narcotic drug and knew that he was going to place the defendant under arrest. However, he did not advise the defendant of his Miranda rights prior to questioning him. Instead, he asked the defendant where he was going, to which the defendant initially responded that he was visiting someone. However, when asked for the name and apartment number of that person, the defendant did not respond, and instead stated that he was going to pay his rent. Officer Figueiredo stated that when the money was recovered from the defendant at the police station, the defendant was asked "why he had all that money on him and he said... [he] was going to pay [his] rent" (id, p25). The officer conceded that when he testified before the Grand Jury, he did not mention the statement about the rent.

On re-direct examination, P.O. Figueiredo described the envelope that was removed by the defendant from his sock as white, folded, and with "a little bit of shine on it" (id, p 41). He said

he had seen hundreds of envelopes like it and on those occasions the envelope contained narcotics. The officer stated that he recovered the envelope from the defendant's pocket, but could not recall if it was before or after the defendant was placed under arrest.

The parties agreed to rely on the video of the defendant's statement instead of calling the Assistant District Attorney who questioned the defendant.

The defendant now moves for the suppression of physical evidence and statements.

CONCLUSIONS OF LAW

At issue initially is the lawfulness of the defendant's arrest. In the opinion of the Court, the credible evidence adduced at the hearing was not sufficient to justify the defendant's arrest.

Preliminarily, the Court would point out that the radio transmission regarding the male black with a firearm could not support the defendant's detention, let alone his arrest.

In Florida v J.L. (529 US 266 [2000]), the United States Supreme Court held that "[a]n anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police's officer's stop and frisk of that person."

In People v Moore (6 NY3d 496 [2006]), the Court of Appeals held that "an anonymous tip, [standing alone], cannot provide reasonable suspicion to justify a seizure..." so that the forcible seizure of the defendant solely on that basis was unlawful.

In People v William "II" (98 NY2d 93 [2002]), the New York Court of Appeals, citing the decision in Florida v J.L., held that a tip must be "reliable in its assertion of illegality, not just in its tendency to identify a determinate person."

In People v Ballard (279 AD2d 529 [2d Dept 2001]), the Second Department, citing Florida v J.L., held that an anonymous report of the "'visible attributes' of a certain person claimed by an unaccountable informant to be present at a certain place at a certain time, accompanied by the assertion that th[is] person ha[s] a gun...is not a sufficient basis upon which to stop and frisk a suspect who, as the police later confirm, matches the description".

In the case at bar, there is no indication that the information provided by the Nassau County police was anything more than an anonymous tip, so that it could not form the basis for the defendant's detention. In any event, in view of the fact that the description provided was very general and could have fit any number of individuals walking in the Redfern projects, and that this encounter occurred at 4:45 P.M., as opposed to the "early morning

hours," when stops are justified upon "much less comprehensive information than would be adequate were the stop at midday" (People v Glaze, 255 AD2d 932 [4th Dept 1998], appeal denied 93 NY2d 853 [1999]), there would have been no reasonable suspicion even if the People established the reliability of the information. Accordingly, the People cannot rely on the Nassau County information to justify the defendant's detention or arrest. Of course, as the Court of Appeals has observed, "police-citizen encounters are dynamic situations during which the degree of belief possessed at the point of inception may blossom by virtue of responses or other matters which authorize and indeed require additional action" (People v Clark, 237 AD2d 372 [2d Dept 1997], citing People v DeBour, supra), so the question becomes, did the observations of Officer Figueiredo, who understandably focused on the defendant by virtue of the information received from Nassau County, establish probable cause to arrest. In the opinion of the Court, they did not.

The officer testified that he saw the defendant reach into his sock, take out a glassine envelope that he believed contained heroin, and place it in his pocket. He said that he observed about 1 to 1½ inches of the envelope, which appeared to him to have a little "shine" on it and which the defendant closed in his fist during the "swift" maneuver of putting it in his

pocket. In the opinion of the Court, it strains credulity to suggest that from a distance of one to two car lengths, the officer was able to conclude that the object taken by the defendant from his sock, closed in his fist, and put in his pocket in one swift motion was a glassine envelope with a "shine" on it. This is particularly so because the observation occurred a 4:45 P.M. on a late fall day when the sun had likely set. It seems to the Court that the more likely scenario is that the officer had a hunch or suspicion that the object he saw was contraband, which he confirmed when he searched the defendant prior to the arrest.² This cannot support the arrest and search of the defendant.

The Court would point out that this is not a situation in which the defendant was exchanging the envelope for currency or otherwise engaging in conduct that the officer could reasonably construe to be criminal, so that the inability to ascertain the exact nature of the item would not be critical in establishing probable cause (see, People v Jones, 90 NY2d 835 [1996]). Rather, this is a simple possession situation and unless the officer actually saw an object that he reasonably believed contained a controlled substance, he did not have probable cause to arrest. Here, the Court finds that he did not see such an object. Accordingly, the defendant was unlawfully arrested so that the

² It bears noting that the officer testified that he did not recall whether he searched the defendant before or after the arrest.

physical evidence recovered and the statements taken pursuant to this unlawful arrest must be suppressed (Wong Sun v United States 371 US 471 [1962]).

Based upon the foregoing, the defendant's motion to suppress physical evidence and statements should be granted.

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ARTHUR J. COOPERMAN, J.H.O.

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS: CRIMINAL TERM: PART JHO
3 -----x

4 THE PEOPLE OF THE STATE OF NEW YORK,
5 -against-
6

7 Indictment No. [redacted]
8

9 Hearing
10 [redacted]

11 Defendant.
12 -----x

13 Queens Supreme Court
14 125-01 Queens Boulevard
15 Kew Gardens, New York 11415
16 December 23, 2014

17 B E F O R E :

18 THE HONORABLE ARTHUR COOPERMAN,
19 Justice, Supreme Court

20 A P P E A R A N C E S:

21 RICHARD A. BROWN, ESQ.,
22 District Attorney, Queens County
23 BY: MICHAEL VANUNU, ESQ.
24 Assistant District Attorney

25 KEVIN P. O'DONNELL, ESQ.
Attorney for the Defendant
125-10 Queens Boulevard
Kew Gardens, New York 11415

26 NICOLE C. ROBINSON, CSR
27 Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF QUEENS: CRIMINAL TERM: PART JHO
3 X

4 THE PEOPLE OF THE STATE OF NEW YORK,
5 -against-
6 Indictment No.
7 [REDACTED]

8 Hearing
9 [REDACTED]
10 Defendant.
11 -----x
12 Queens Supreme Court
13 125-01 Queens Boulevard
14 Kew Gardens, New York 11415
15 December 23, 2014

16 B E F O R E :

17 THE HONORABLE ARTHUR COOPERMAN,
18 Justice, Supreme Court
19 A P P E A R A N C E S:

20 RICHARD A. BROWN, ESQ.,
21 District Attorney, Queens County
22 BY: MICHAEL VANUNU, ESQ.
23 Assistant District Attorney

24 KEVIN P. O'DONNELL, ESQ.
25 Attorney for the Defendant
 125-10 Queens Boulevard
 Kew Gardens, New York 11415

26 NICOLE C. ROBINSON, CSR
27 Senior Court Reporter
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1 THE CLERK: Calendar number one, [REDACTED]
2 [REDACTED], continued hearing.

3 MR. VANUNU: For the People, Assistant District
4 Attorney Michael Vanunu.

5 Good morning your Honor.

6 MR. O'DONNELL: Kevin O'Donnell for [REDACTED]

7 Good morning, your Honor.

8 THE COURT: Good morning. This is a continued
9 hearing.

10 MR. VANUNU: People are ready to proceed. The
11 witness who was previously on the stand is sitting right
12 outside, Judge.

13 THE COURT: So, bring him in.

14 THE COURT OFFICER: Witness entering.

15 A N D R E F I G U E I R E D O , a witness recalled by the
16 People, after having been duly sworn by the Clerk of the Court,
17 took the witness stand and testified as follows:

18 THE COURT OFFICER: The People are recalling Police
19 Officer ANDRE Figueiredo. Last name F-I-G-U-E-I-R-E-D-O,
20 shield. Number 18440, 101st Precinct, New York City Police
21 Department.

22 THE CLERK: Officer, I remind you you are still
23 under oath.

24 THE WITNESS: Yes.

25 THE COURT: You are on your cross.

1 MR. O'DONNELL: Correct, Judge. Thank you.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. O'DONNELL:

4 Q Good morning.

5 Is it officer or detective?

6 A Officer.

7 Q Officer, okay.

8 It has been a while since we last spoke about this case.

9 Forgive me if I'm a little redundant.

10 A Okay.

11 Q All right.

12 Now, you responded to 1310 Redfern because you received
13 a call about gunshots, correct?

14 A Well, we responded to the Redfern area. We weren't
15 specifically given an address, and it was a -- one of the
16 anti-crime officers who was in a separate car, I guess he was
17 flagged down. I don't know how exactly he got his information
18 from a Nassau officer on the border because Redfern is the border
19 of Nassau, and he put over the radio that there was a male with a
20 firearm who fled into the Redfern projects from Nassau.

21 Q Now, when there is a call that's put over the radio,
22 does the substance of that call result in that language or the
23 substance of that language being put on to a Sprint report?

24 A I don't know the answer to that because I don't know how
25 their system is, whether or not central themselves, dispatcher has

1 to put it through for it to be recorded or if anything that you
2 say over the radio gets recorded. That, I don't know.

3 Q Do you know if anybody made any call to dispatch?

4 A I do not know that.

5 Q Is it fair to say that as part of your responsibilities,
6 when you receive a call about a gun, it is very serious, correct?

7 A Correct.

8 Q And is it part of protocol for you make a call to
9 dispatch to let them know where you are or where you're going
10 especially in the case of a person with a gun?

11 MR. VANUNU: Objection.

12 THE COURT: Sustained.

13 Q Well, do you recall -- you were with two other people?

14 A Two other officers.

15 Q Do you recall if you or either of the other officers
16 made a call to dispatch?

17 MR. VANUNU: Objection.

18 THE COURT: I did not.

19 THE COURT: That's two questions. Sustained.

20 Q Did anybody from your vehicle call dispatch?

21 A I do not know if other people called.

22 Q Now, how many other officers -- how many other cars were
23 you in communication with about this potential person with a gun?

24 A Whoever was in that area might have heard it. I don't
25 know how many cars were in that area specifically, no.

1 Q When you pulled up to 1310 Redfern, were there any other
2 police cars in the vicinity?

3 A At that moment, I did not see any other ones.

4 Q Did there come a time where other police cars arrived?

5 A Yes.

6 Q How soon after you got there did other police cars
7 arrive?

8 A When we were placing the defendant under arrest.

9 Q And how long was that after you had pulled up to where
10 you first saw my client?

11 A Maybe a minute or two. Not very long at all. The whole
12 process wasn't very long.

13 Q So, when you first saw my client, he wasn't alone, was
14 he?

15 A Yes.

16 Q He was alone?

17 A Yeah.

18 Q Now --

19 A Well, there was another gentleman that was by the front
20 door if I recall, but I don't remember exactly when he left and
21 when he was there. My focus was on the defendant.

22 Q Now, it is fair to say that from the sidewalk to the
23 entrance to the door when you go inside the apartment building, it
24 is approximately 150 feet, maybe the size of half a football
25 field?

1 A No. The sidewalk from where -- from the street because
2 there are two different -- you have the street, then you have a
3 sidewalk, a walkway and then there is another sidewalk that goes
4 to the building, so are you speaking of the street or the -- or
5 from where the point of that turn to the building or are you
6 talking about that sidewalk, that walkway?

7 Q Let's break it down then, okay.

8 So, from the street to the point where you turned, how
9 far is that?

10 A I don't remember exactly. I couldn't tell you.

11 Q If you could use anything in the courtroom to maybe
12 point it out.

13 A From the street to the front of the 1310 is maybe a
14 little past that wall back there and then like from when I
15 approached that corner to where I probably saw the defendant was
16 probably from me to like maybe where you are, that type of --

17 THE COURT: The first distance, I would say
18 approximately 40 feet the second distance is after that.

19 MR. O'DONNELL: That sounds about right, Judge.

20 Q Now, when you first saw my client, had your car stopped
21 yet?

22 A No.

23 Q Were you pulling up?

24 A Yes.

25 Q And as you were pulling up, he was walking towards the

p.o. FIGUEIREDO - PEOPLE - CROSS

1 entrance of 1310 Redfern, correct?

2 A Correct.

3 Q How far away from him were you when you first saw him?

4 A A few car lengths. I don't remember exactly. I
5 couldn't even tell you a number.

6 Q Where precisely was he when you first saw him?

7 A He was making -- I believe -- he was making that left,
8 like from that main walkway, turning up that walkway heading
9 towards 1310.

10 Q So, he was going from the sidewalk the general sidewalk
11 where he made a left to go into towards the building, right?

12 A Correct.

13 Q How far did he proceed until --

14 A He probably went about halfway up the walkway when I
15 observed what I observed.

16 Q And you observed him kneel down?

17 A Correct.

18 Q And reach into his sock?

19 A Yeah, it was like his shoe, sock area.

20 Q Now, were you the driver or the passenger?

21 A Driver.

22 Q Were you having a conversation with your brother
23 officers about the actions of [REDACTED] at that time?

24 A Absolutely. As soon as we saw him, we call -- I forget.
25 I don't remember who saw him first, but right away, all eyes went

1 on him because, you know, the person that we were possibly looking
2 for, could possibly have a firearm, so we were all watching, yes.

3 Q Now, you testified earlier that you saw him reach down
4 and pull a white envelope?

5 A Correct.

6 Q Out of his --

7 A With his right hand, from his right foot, yeah.

8 Q And you could only see about half of that white
9 envelope, correct?

10 A Correct.

11 Q You saw him put that envelope into his pocket, right?

12 A Correct, his right jacket pocket.

13 Q And it is fair to say that at the time you didn't know
14 for sure what that envelope was, correct?

15 A From my prior experience --

16 Q I didn't ask from -- you didn't know for sure what that
17 envelope was?

18 A I was positive that it was an envelope. That's what it
19 appeared to be for me.

20 Q So, you were positive that it was -- from --

21 THE COURT: He said that's what it appeared to be
22 to him. That's his answer.

23 Q When you approached [REDACTED] you were positive that
24 he had heroin on him, correct?

25 A At that time, yeah. I asked him -- I forgot the exact

1 words that were used, but pretty much -- he pretty much said that
2 he had more on him.

3 Q What was the first thing you asked him?

4 A I don't remember the exact words. This was over a year
5 ago. I'm sorry.

6 Q That's okay, but --

7 A I remember a conversation. I remember questions being
8 asked why he was there, what he was doing in that location because
9 he lived in [REDACTED] I don't remember exactly what questions
10 were asked at what time and what order, but I remember a
11 conversation about him living in [REDACTED] and why he was there.

12 Q But it is fair to say that after you saw him take what
13 you believe to be heroin out of his jacket, before you asked him
14 anything, you didn't advise him of his Miranda Warnings, correct?

15 A No.

16 Q At any point did you advise him of his Miranda Warnings?

17 A It is not procedure --

18 Q I didn't ask you that?

19 A No, I did not.

20 Q Did you at any time communicate with the people from
21 Nassau?

22 A I personally did not.

23 Q Did you make any communications prior to you, your
24 brother officers, prior to stopping my client that you had a
25 possible suspect of the person who was described as having a gun?

1 A I don't remember. I don't know if one of the other
2 officers in the vehicle put anything over the radio as us being
3 there or seeing anything. I myself, I was driving. I did not put
4 anything over the radio.

5 Q After [REDACTED] was arrested, do you know if you or
6 any of your brother officers that were there in your car put over
7 a communication that we apprehended a suspect, but he had no gun?

8 MR. VANUNU: Objection.

9 THE COURT: Sustained.

10 MR. O'DONNELL: Judge, could I just get a moment?

11 THE COURT: Sure.

12 (Counsel and defendant confer.)

13 Q Officer, when you said that you saw [REDACTED] reach
14 into his sock and pull out an envelope?

15 A Correct.

16 Q What did he do with that envelope when he pulled it out
17 of his sock?

18 A He had it in his hands and then he cupped into his hand
19 and put his hand in his jacket pocket.

20 Q How long did that take approximately?

21 A Seconds.

22 Q It was quick?

23 A He wasn't speeding through it, but I guess just normal
24 routine if I recall, I think I showed how it happened last time I
25 was here.

1 Q Is it fair to say that he didn't take it out and look at
2 it and display it?

3 A No, he just took it out, like when he stood up it was at
4 his side and he then took it in his hand and put it into his
5 pocket.

6 Q He just took it out of his pocket --

7 A Took it out of his sock --

8 Q Out of his sock, sorry.

9 A While he was standing up it was at his side. That's
10 when he observed it and then he -- I don't know if he closed his
11 fist around it or whatever he did and he put it into his pocket.

12 Q Did he ever -- did you ever see him look at it before he
13 put it in his pocket?

14 A I was looking at his hands. I don't know if he looked
15 at it or not. I don't remember. Like I said, this was over a
16 year ago. I remember certain things.

17 Q So, it is your testimony that you don't remember if he
18 looked at it?

19 A I don't remember. I can't remember if he looked at it
20 or not.

21 MR. O'DONNELL: I have nothing further.

22 THE COURT: Do you have anything?

23 MR. VANUNU: Yes.

24 THE DEFENDANT: Excuse me, your Honor.

25 MR. O'DONNELL: One second, Judge.

1 THE DEFENDANT: May I address the Court, please?

2 THE COURT: You have your attorney. Consult with
3 him.

4 THE COURT: Something has to be brought to my
5 attention, do it through your attorney.

6 THE DEFENDANT: This is my reason for asking is
7 concerning my attorney.

8 THE COURT: Pardon me?

9 THE DEFENDANT: My reasons for asking is concerning
10 my attorney.

11 THE COURT: Well, I could guess what you're about
12 to say and this attorney has been representing you in this
13 hearing and assigned to represent you and he is a capable
14 attorney and I'm not going to get involved in that. If you
15 have an application to make regarding your representation
16 when you return to the judge in TAP A, then you can deal with
17 it at the time.

18 Meanwhile, whatever is being done now is being done
19 in an appropriate way as far as I'm concerned and so you are
20 not being prejudiced in any way.

21 THE DEFENDANT: I disagree with that, your Honor.

22 THE COURT: You may disagree with that, but what
23 I'm saying, that knowing this attorney, knowing his
24 capability, knowing what he's done before me in July and here
25 and now, the questions he's asking, he's fully representing

1 you with respect to this issue of a Dunaway/Mapp/Huntley
2 hearing.

3 And as I said, if you want to make an application
4 to the court, I have no authority to do anything about this.
5 In any event, make it before the Judge in TAP A when you
6 return there.

7 THE DEFENDANT: This is affecting my hearing, your
8 Honor. I'm only getting one shot.

9 THE COURT: You can say all you want. It is
10 not -- as far as I'm concerned, it is not.

11 THE DEFENDANT: You don't even know what I'm
12 saying. You said you guess what I was going to say.

13 THE COURT: Our discussion is ending right now.

14 Do you have anything?

15 MR. VANUNU: Yes, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. VANUNU:

18 Q Officer Figueireda, you said when you observed the
19 defendant remove a white envelope from his sock, can you describe
20 what that white envelope looked like?

21 A It was a small, like folded white square and it had like
22 a little bit of a shine on it.

23 Q And based on your training and experience in the New
24 York City Police Department and in the Street Narcotics
25 Enforcement Unit, what did you believe that envelope was?

1 A Heroin.

2 Q Have you seen envelopes like that before in the past?

3 A Yes.

4 Q Approximately how many times?

5 A Hundreds.

6 Q And when you had seen those in the past, were
7 they -- did it contain narcotics?

8 A Yes.

9 Q Now, you said that the envelope was small.

10 Approximately how much of the envelope did you see when the
11 defendant removed it from his sock?

12 A Maybe an inch, inch and-a-half.

13 Q From where you were standing, were you able to
14 have -- come to a conclusion as to what you believed that envelope
15 was?

16 A Yes.

17 Q What was that?

18 A That it was heroin.

19 Q Now, after -- you had mentioned earlier that after he
20 put it in his jacket pocket, you approached him and you had spoken
21 to him?

22 A Correct.

23 Q Who removed the items from the defendant's jacket
24 pockets?

25 A I did.

1 Q Was that before or after he was placed under arrest?

2 A I don't remember the exact chain of events.

3 MR. VANUNU: I have no further questions.

4 THE DEFENDANT: I would like to make an application
5 to the Court. My reason is he is being questioned --

6 THE COURT: I'm not listening to you, sir. I am
7 not going to listen to you address me because you are
8 represented by counsel.

9 THE DEFENDANT: I'm not being represented. That's
10 what I'm saying. There are issues on the record that I can
11 prove. I'm not just saying this. I would like to have the
12 opportunity.

13 THE COURT: Are you done with the witness?

14 MR. VANUNU: Yes.

15 THE COURT: You can step down.

16 (Witness excused.)

17 THE DEFENDANT: I'm not just saying it to be
18 saying. I want to be able to show you that this man is up
19 here lying. He testified three different times to things.
20 He said that he -- he testified July 29th. He got a call
21 from 101 Precinct. They got a call from Nassau. Now he is
22 saying he got a call -- I could prove my point.

23 THE COURT: You know why I'm not listening to you,
24 because you're not a sworn witness. You are just shouting
25 out from the counsel table.

1 THE DEFENDANT: I would like to question the
2 witness then because my attorney is not doing his job.

3 THE COURT: Once again, I'll say so you say.

4 THE DEFENDANT: I can prove it. If you give me an
5 opportunity to let me question the witness, I gave him a list
6 of questions, formatted questions to ask him, and he did none
7 of that. I have my list of questions.

8 THE COURT: What law school did you go to?

9 THE DEFENDANT: Say that again.

10 THE COURT: What law school.

11 THE DEFENDANT: Ashford University for Paralegal
12 Studies in Georgia.

13 THE COURT: Are you admitted to practice in the
14 State of New York?

15 THE DEFENDANT: No, sir, but I know what my rights
16 are, though.

17 THE COURT: Do you have another witness?

18 MR. VANUNU: In lieu of the other witness, I have
19 spoken to Mr. O'Donnell --

20 THE DEFENDANT: I object to the whole hearing.
21 This don't make no sense.

22 MR. VANUNU: I would like to enter the disk that's
23 in my hand which I will have marked or ask to be marked as
24 People's Exhibit 1 and played instead of calling a witness to
25 the stand.

1 MR. O'DONNELL: I have no problem with that, Judge.

2 THE COURT: Okay. Exhibit 1?

3 MR. VANUNU: Exhibit 1.

4 THE COURT: Deemed in evidence and stipulated to.

5 How long is it?

6 MR. VANUNU: Not very long.

7 THE COURT: What does that mean?

8 MR. VANUNU: Minutes, minutes.

9 (Video played.)

10 MR. VANUNU: With that being played, the People

11 rest.

12 THE COURT: Mr. O'Donnell.

13 MR. O'DONNELL: Judge, there is a witness that I

14 haven't been able to get in contact with. I know that this

15 hearing has been going on for quite a while. I don't know if

16 your Honor is willing to give me another opportunity to try

17 and get her in here. One of the other things my client wants

18 me to do is subpoena any 911 calls that were made from Nassau

19 County in that particular precinct on the date in question.

20 If there's nothing -- I didn't see the relevance in doing

21 that because if there is nothing on that -- there are many

22 different ways that a police officer can receive his

23 information and whether it is on it or if it is not on it, it

24 certainly doesn't mean the officer is lying. It just means

25 that there could be a different way in which he got it. He

1 didn't say that he was responding to a 911 call, so I
2 just -- I think that's my client's main gripe, that I didn't
3 subpoena the Nassau 911 calls. Again, there are many ways in
4 which police officers come into information. I'm just basing
5 that on my 20 years information.

6 MR. VANUNU: I want to put on the record that I
7 have actually subpoenaed all 911 and Sprint calls within New
8 York City for the date, time, location of the incident and
9 nothing came back, so it is the People's position that based
10 on my investigation, I asked my officer to look into it, I've
11 done my own requests, and there is nothing on any Sprint
12 report for that date and time of what happened.

13 THE COURT: I would imagine when you get down to
14 it, the officer testified as to what happened in front of
15 1310 Redfern and he explained why he was at that location.
16 What happened someplace else may not even be relevant.
17 Whether it happened or not, it's a question of credibility of
18 the witness about which I'm sure you'll argue at the
19 appropriate time at the end of the case, but it is your call,
20 not mine.

21 MR. O'DONNELL: Well, Mr. Vanunu's last date is
22 January 2nd.

23 MR. VANUNU: Correct.

24 MR. O'DONNELL: Is the court in session on January
25 2nd?

1 THE COURT: No, it is a Friday. The court is in
2 session generally, but not this part.

3 MR. O'DONNELL: Are you in next week?

4 THE COURT: The court is not in session at all
5 until the 2nd, so the courts are closed. The date of January
6 6th I'm here and the 13th and 20th.

7 MR. O'DONNELL: I don't know how that would work
8 for the People. I think calling this witness is relevant.
9 Like I said, I have reached out to try and find her.

10 THE COURT: It doesn't make a difference whether
11 Mr. Vanunu is here or not. You know what will happen. The
12 next time we are here, there will be a DA who says he's got
13 to familiarize himself or herself with the file and this will
14 drag on, but so be it.

15 MR. VANUNU: Judge, for the record, can I have an
16 offer of proof as to what this witness is going to testify
17 to, so we can continue this adjournment as opposed to
18 finishing this now because it has been going on for six
19 months?

20 MR. O'DONNELL: Sure. It is exactly what he
21 testified to or what he stated in the video, that he was just
22 walking into the building without bending over. This woman
23 was pretty much walking with him. She held the door open for
24 him. She was in the vestibule when the cops just pretty much
25 bum-rushed him and just searched him.

1 THE COURT: Okay. That takes care of that issue.
2 You will have an opportunity to bring that person in. Give
3 me a date.

4 MR. O'DONNELL: My client is asking for January
5 20th.

6 THE COURT: January 20th.

7 THE CLERK: Bail continued.

8 MR. O'DONNELL: Judge, can I get a copy of the
9 minutes pursuant to 18B, please.

10 THE COURT: Yes.

11 MR. VANUNU: I'm going to put in a request for the
12 minutes also.

13 *****
14 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
15 MINUTES TAKEN OF THIS PROCEEDING.

16
17 NICOLE C. ROBINSON, CSR
18 Senior Court Reporter

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